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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS E. KEPKE,

Defendant.

Criminal No. 3:21-CR-00155-JD

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION IN LIMINE
TO EXCLUDE TESTIMONY OF
EVATT TAMINE

Hearing.: November 28, 2022
Time: 9:00 a.m.
Place: Courtroom 11, 19th Floor

In response to Defendant's *Motion in Limine* to Exclude testimony from Evatt Tamine, or in the alternative, a continuance of the trial date, the United States represents that Defendant's motion is moot. As evidenced by the government's witness list filed on November 7, 2022, *ECF 128*, the United States does not plan on calling Evatt Tamine as a witness during trial and opposes any continuance of the trial date in this matter.

1 In further response, Defendant's motion inaccurately represents the state of discovery in this case
2 regarding Evatt Tamine. On February 4, 2022, the United States provided Defendant approximately
3 475 gigabytes (about 2.5 million pages) of evidence from, *inter alia*, the search warrant executed by the
4 Bermuda Police Service on September 5, 2018 at the home of Evatt Tamine. *See Exhibit 2 –*
5 *Government's Transmittal Letter dated February 4, 2022.* The United States was not a co-applicant for
6 the September 5, 2018 search warrant.

7 By order of the court in Bermuda, this evidence was reviewed by a barrister in the United
8 Kingdom for potential attorney-client privilege, and other non-relevant evidence. *See Exhibit 3 – Order*
9 *the Supreme Court of Bermuda.* Upon completion of this review, non-privileged and relevant evidence
10 was provided to the United States through a Mutual Legal Assistance Treaty ("MLAT") request. The
11 United States does not possess, and has not seen, any evidence withheld by the reviewing barrister, or
12 any evidence that may have been seized by Bermudian authorities and not provided to the United States
13 through the MLAT process.

14 Additional electronic devices were seized by the Bermuda Police Service and provided by Evatt
15 Tamine. The United States has not seen and does not currently possess this evidence. This data was
16 compiled and sent to the barrister in the United Kingdom for privilege review. The existence of this
17 additional miscellaneous data, and its review, was explained to Defendant in a letter from the United
18 States on March 10, 2022, and further explained to counsel on November 3, 2022 during a telephone
19 call. *See Exhibit 4.* While this review process was ongoing, on August 5, 2022, Mr. Brockman passed
20 away and the charges against Mr. Brockman were dismissed. Currently, given Mr. Brockman's passing,
21 and the dismissal of the charges against him, the United States has no plans to receive this additional
22 evidence.

1 Accordingly, the United States respectfully requests that Defendant's instant motion be denied as
2 moot.

3
4 Date : November 10, 2022

Respectfully submitted,

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s/ Corey J. Smith
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CERTIFICATE OF SERVICE

I the undersigned do hereby certify that on the 10th of November 2022, I electronically filed the foregoing Government's Response to Defendant's *Motion In Limine* to Exclude Testimony of Evatt Tamine with the ECF electronic filing system, which will send notice of electronic filing to counsel of record.

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